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EXAMINER

ALAM, FAYYAZ

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/517,533
Filing Date: January 04, 2005
Appellant(s): NIEMI ET AL.

Alicia M. Choi
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 1/19/10 appealing from the Office action mailed 3/17/09.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2003/0217142	Bobde	11-2003
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2008/0244026	Holt	10-2008
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Donovan, "IMPS - Instant Messaging and Presence using SIP"

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 38-39 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims disclose "computer readable medium" without specifying what the medium is, either in the specification or the claims. 39Due to the fact that the "medium" is not necessarily tied to statutory subject matter, since "medium" is not defined to exclude any non statutory subject matter.

Claim Rejections - 35 USC § 112

Claims 38-39 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The phrase "computer readable medium" is not properly described in the specification.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1 - 6, 11 - 23, 25 - 29, and 34 - 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Bobde et al. (U.S. Application # 2003/0217142)** in view of **Holt et al. (USPN 2008/0244026)**.

Consider **claims 1, 34, 38, and 39**, Bobde et al. disclose a method in a communication system (see title), the system comprising:

a registrar or registration program (154) (read as first network element and registrar server) for maintaining registration information (see [0028]; [0029]; figure 3; a registration program along with a registrar is disclosed in paragraph [0029] to process registration information, therefore it inherently maintains registration) from user (103) and user (107) (read as plurality of users; see figure 3)

a presence agent (152) (read as second network element and presence server) for maintaining presence information (read as information) associated with said user (103) and user (107) (read as plurality of users), wherein said presence agent (read as second network element) information is dependent on the registration information ([0028]; [0029]; figure 3), and said method comprising:

sending notifications (read as sending a subscribe message; [0028]) of changes in the presence of computing devices (read as an event) from the presence agent (152) (read as second element) to the registrar or registration program (154) (read as first entity and registrar server; examiner takes note that it is not explicitly disclosed in paragraph [0028] but it is stated that one of the tasks of the presence agent (152) is to “generate notifications of changes” which would inherently be sent or queried to the “registrar” since that is where the user registration resides), wherein the change in the

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presence of computing devices (read as event) is an introduction of a user to the network (read as change in registration information; [0028]) of at least first user (103) (read as one of the plurality of users at the first element; [0028]);

receiving at the registrar or registration program (154) (read as first element and registrar server) a register message ([0028]) from at least user (103) (read as one user), said message changing the registration information (by way of processing presence information) of said at least user (103) (read as one user) ([0028]).

Bobde further discloses sending a notification from the first element and registrar server to the second element and presence server in response to the register message, wherein the notification includes information associated with said at least one user, said at least one user comprising registration status information of a network device operated by said user (see [0004;0028-0029]) .

However, Bobde et al. does not explicitly disclose sending a subscriber message for an event from the second network element to the first network element, wherein the event is a change in registration information of at least one of the plurality of users at the first network element.

In the related field of endeavor, Holt discloses sending a subscriber message for an event from the second network element to the first network element, wherein the event is a change in registration information of at least one of the plurality of users at the first network element (see abstract; [0019; 0025];figs. 1-3 and associated text).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of invention to incorporate the teachings of Holt with that of Bobde et al. in order to provide a user presence and availability status to the communication network.

However, Bobde as modified by Holt does not explicitly disclose second network element separate from the first network element.

Nevertheless, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of Bobde and Holt in order to reduce loading in one server and provide more efficient processing and further Bobde discloses separate modules for registrar and presence server.

Consider **claims 2, 19, and 25** in view of claims 1, 17, and 18, Bobde et al. as modified by Holt disclose a method, where an event header (read as event package [0030]; since the header inherently defines the type of package) is defined, the event header (read event package) being associated with said change in presence of computing device (read as an event) ([0030]).

Consider **claims 3, 20, and 26** in view of claims 2, 17, and 18, Bobde et al. as modified by Holt disclose a method, wherein a registrar or a registration program (154) (read as first entity; [0029]) is defined.

Consider **claims 4, 21, and 27** in view of claims 3, 17, and 18, Bobde et al. as modified by Holt disclose a method, wherein the change in registration information relates to presence information ([0028]).

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Consider **claims 5, 22, and 28** in view of claims 4, 17, and 18, Bobde et al. as modified by Holt disclose a method, wherein a presence agent (152) (read as second entity) is a presence server ([0028]).

Consider **claims 6, 23, and 29** in view of claims 1, 17, and 18, Bobde et al. as modified by Holt disclose a method, wherein the system (read as invention) operates in accordance with a session initiation protocol or SIP ([0022]).

Consider **claim 11**, Bobde et al. disclose a communication system (see title) comprising:

a registrar (154) (read as first network element and registrar server) for maintaining registration information ([0028]; [0029]; figure 3; a registration program along with a registrar is disclosed in paragraph [0029] to process registration information, therefore it inherently maintains registration) from user (103) and user (107) (read as plurality of users; see figure 3);

a presence agent (152) (read as second network element and presence server) for maintaining presence information (read as information) associated with said user (103) and user (107) (read as plurality of users), wherein said presence agent (read as second network element and presence server) information is dependent on the registration information ([0028]; [0029]; figure 3);

said presence agent (152) (read as second network element and presence server) operable to send notifications (read as sending a subscribe message; [0028]) of changes in the presence of computing devices (read as an event) to the registrar (154) (read as first network element and registrar server), and said registrar or registration

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program (154) (read as first network element and registrar server) operable to receive a register message ([0028]) from at least user (103) (read as one user), said register message changing the registration information (by way of processing presence information) of said at least user (103) (read as one user), wherein the change in the presence of computing devices (read as event) is associated with the introduction of a user to the network (read as change in registration information; [0028]) of at least user (103) or user (107) (read as one of the plurality of users at the first entity and registrar server; [0028]) at the registrar (read as first entity and registrar server; see [0028]).

Bobde further discloses sending a notification from the first element and registrar server to the second element and presence server in response to the register message, wherein the notification includes information associated with said at least one user, said at least one user comprising registration status information of a network device operated by said user (see [0004;0028-0029]) .

However, Bobde et al. does not explicitly disclose sending a subscriber message for an event from the second network element to the first network element, wherein the event is a change in registration information of at least one of the plurality of users at the first network element.

In the related field of endeavor, Holt discloses sending a subscriber message for an event from the second network element to the first network element, wherein the event is a change in registration information of at least one of the plurality of users at the first network element (see abstract; [0019; 0025];figs. 1-3 and associated text).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of invention to incorporate the teachings of Holt with that of Bobde et al. in order to provide a user presence and availability status to the communication network.

However, Bobde as modified by Holt does not explicitly disclose second network element separate from the first network element.

Nevertheless, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of Bobde and Holt in order to reduce loading in one server and provide more efficient processing and further Bobde discloses separate modules for registrar and presence server.

Consider **claim 12** in view of claim 11, Bobde et al. as modified by Holt disclose a communication system further comprising an event header (read as event package [0030]; since the header inherently defines the type of package) associated with said change in presence of computing device (read as an event) ([0030]).

Consider **claim 13** in view of claim 12, Bobde et al. as modified by Holt disclose a communication system with a registrar or a registration program (154) (read as first entity; [0029]; figure 3).

Consider **claim 14** in view of claim 13, Bobde et al. as modified by Holt disclose a communication system, wherein the change in registration information relates to presence information ([0028]).

Consider **claim 15** in view of claim 4, Bobde et al. as modified by Holt disclose a communication system, wherein a presence agent (152) (read as second entity) is a presence server ([0028]).

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Consider **claim 16** in view of claim 1, Bobde et al. as modified by Holt disclose a communication system, wherein the system (read as invention) operates in accordance with a session initiation protocol or SIP ([0022]).

Consider **claims 17, 36, and 40**, Bobde et al. disclose a network element and a registrar server (see figure 3) comprising:

storage circuitry configured to maintain registration information (see [0028]; [0029]; figure 3; a registration program along with a registrar is disclosed in paragraph [0029] to process registration information, therefore it inherently would have storage circuitry to maintain registration information) from user (103) and user (107) (read as plurality of users; see figure 3);

receiving circuitry configured to receive notifications (read as receiving a subscribe message; [0028]; figure 3) of changes in the presence of computing devices (read as an event) from a registrar (154) (read as first entity), wherein the change in the presence of computing devices (read as event) is associated with an introduction of a user to the network (read as change in registration information; [0028]) of at least first user (103) (read as one of the plurality of users at the first entity; [0028]) at the network element (figure 3);

receiving circuitry configured to receive a register message ([0028]) from at least first user (read as one user), said register message changing the registration information (by way of processing presence information) of said at least first user (read as one user) ([0028]);

Bobde further discloses sending a notification from the first element and registrar server to the second element and presence server in response to the register message, wherein the notification includes information associated with said at least one user, said at least one user comprising registration status information of a network device operated by said user (see [0004;0028-0029]) .

However, Bobde et al. does not explicitly disclose sending a subscriber message for an event from the second network element to the first network element, wherein the event is a change in registration information of at least one of the plurality of users at the first network element.

In the related field of endeavor, Holt discloses sending a subscriber message for an event from the second network element to the first network element, wherein the event is a change in registration information of at least one of the plurality of users at the first network element (see abstract; [0019; 0025];figs. 1-3 and associated text).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of invention to incorporate the teachings of Holt with that of Bobde et al. in order to provide a user presence and availability status to the communication network.

However, Bobde as modified by Holt dose not explicitly disclose second network element separate from the first network element.

Nevertheless, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of Bobde and Holt in order to reduce loading in one server and provide more efficient processing and further Bobde discloses separate modules for registrar and presence server.

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Consider **claims 18, 37, and 41**, Bobde et al. disclose a network element and presence server (see figure 3) comprising:

storage circuitry configured to maintain presence information (read as information) associated with said first user (103) and second user (read as plurality of users), wherein said information is dependent on the registration information ([0028]; [0029]; figure 3), maintained at registrar (154) (read as first entity and registrar server);

transmitting circuitry configured to send notifications (read as sending a subscribe message; [0028]) of changes in the presence of computing devices (read as an event) to the registrar (154) (read as first entity and registrar server), wherein the change in the presence of computing devices (read as event) is associated with an introduction of a user to the network (read as change in registration information; [0028]) of at least first user (103) (read as one of the plurality of users at the first entity; [0028]);

Bobde further discloses sending a notification from the first element and registrar server to the second element and presence server in response to the register message, wherein the notification includes information associated with said at least one user, said at least one user comprising registration status information of a network device operated by said user (see [0004;0028-0029]) .

However, Bobde et al. does not explicitly disclose sending a subscriber message for an event from the second network element to the first network element, wherein the event is a change in registration information of at least one of the plurality of users at the first network element.

In the related field of endeavor, Holt discloses sending a subscriber message for an event from the second network element to the first network element, wherein the event is a change in registration information of at least one of the plurality of users at the first network element (see abstract; [0019; 0025];figs. 1-3 and associated text).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of invention to incorporate the teachings of Holt with that of Bobde et al. in order to provide a user presence and availability status to the communication network.

However, Bobde as modified by Holt dose not explicitly disclose second network element separate from the first network element.

Nevertheless, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of Bobde and Holt in order to reduce loading in one server and provide more efficient processing and further Bobde discloses separate modules for registrar and presence server.

Claims 8 - 9 and 31 - 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Bobde et al. (U.S. Application # 2003/0217142)** in view of in view of **Holt et al. (USPN 2008/0244026)** as applied to claims above, and further in view of **Donovan ("IMPS - Instant Messaging and Presence Using SIP. Fall VON Developers' Conference", Sep. 13, 2000, www.dynamicsoft.com).**

Consider **claims 8 and 31** in view of claims 1 and 18, Bobde et al. as modified by Wang fail to disclose a method, wherein a third entity sends a subscribe message to the second entity for information associated with said at least one user.

In the related field of endeavor, Donovan discloses a method, wherein a proxy server (read as third entity) sends a subscribe message to presence server (read as second entity for information associated with at least one user (see figure on page 7).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of invention to incorporate the teachings of Donovan with that of Bobde et al. as modified above since this signaling scheme is well known and exists in most applications in the application layer and would provide convenience and conservation of financial resources.

Consider **claims 9 and 32** in view of claims 8 and 18, Bobde et al. as modified by Wang fail to disclose the method, wherein the second entity sends a notification to the third entity in response to the notification received at the second entity, wherein said sent notification includes information associated with said at least one user.

In the related field of endeavor, Donovan discloses the method, wherein the presence server (read as second entity) sends an accepted message (read as notification) to the proxy server (read as third entity) in response to the subscribe (read as notification) received at the presence server (read as second entity), wherein said sent accepted message (read as notification) includes information associated with said at least one user (Donovan, page 7).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of invention to incorporate the teachings of Donovan with that of Bobde et al. as modified above since this signaling scheme is well known and exists in most applications in the application layer.

Claims 7, 10, 24, 30, and 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Bobde et al. (U.S. Application # 2003/0217142)** in view of **Holt et al. (USPN 2008/0244026)** in view of **Donovan ("IMPS - Instant Messaging and Presence Using SIP. Fall VON Developers' Conference", Sep. 13, 2000, www.dynamicsoft.com)** and further in view of **Wang (U.S. Application # 2002/0131395)**.

Consider **claims 7, 24, and 30** in view of claims 6, 17, and 18, Bobde et al. fail to disclose the method, wherein the subscribe message comprises a SIP SUBSCRIBE message, and the notification comprises a SIP NOTIFY message.

In the related field of endeavor, Wang discloses SIP SUBSCRIBE/NOTIFY message for subscription and notification of presence status ([0078]).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of invention to incorporate the teachings of Wang with that of Bobde et al. as modified above in order to use the conventional and well-known communication messages in session initiation protocol to comply with industry standard and furthermore conserve financial resources.

Consider **claims 10 and 33** in view of claims 8 and 18, Bobde et al. as modified above does not explicitly disclose the method, wherein the third entity is an application server.

In the related field of endeavor, Wang clearly disclose an application server (216) ([0031 - 0040]).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of invention to incorporate the teachings of Wang with that of Bobde et al. as modified above in order to provide various multimedia capabilities other than just presence status.

(10) Response to Argument

A. Claims 38 and 39 recite statutory subject matter

Initially appellant argues that the Office action dated March 17, 2009 was incomplete and was an improper final since the arguments with respect to rejection of claims 38 and 39 under 101 and 112 were not addressed.

Examiner respectfully disagrees.

Claims 38 and 39 were newly amended to overcome the 101 and 112 rejections, however, the examiner sustained the rejections even though the amendments were made. Examiner had explained his stance in the previous action and the office action in question. Furthermore, since the rejections were made again, the arguments were addressed in light of the rejection. therefore, the finally is proper.

Appellant argues what is disclosed in the specification has no bearing on patentability under the statutory classes of invention governed by 35 U.S.C. §101. Furthermore, "A computer readable medium" is statutory subject matter under U.S. patent laws. Support for the definition of a computer readable medium is provided by In re Lowry, 32 F.3d 1579, 1583-1854, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994), which states: "When functional descriptive material is recorded on some computer-readable

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medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized" (see §2106.01 of the MPEP). As can be clearly observed from the court's decision in *Lowry* a computer readable medium is statutory subject matter under §101. By having software recorded on a computer readable medium, it becomes structural and functional with respect to that medium, and, thus, statutory subject matter. Withdrawal of the rejection is kindly requested.

Examiner respectfully disagrees.

The "medium" is not defined by the specification and when interpreted broadly one of ordinary skill in the art can reasonably understand it to be a carrier wave, etc.

B. Claims 38 and 39 are definite

Appellant argues referring the Examiner to FIG. 4 of the present application, a process is illustrated which defines a new event package for event registrations of a user to be implemented by a registrar and used by a presence server 303. The user may be a computer terminal 123 or laptop 112 which may include a computer readable medium (see lines 23-33 of page 7 of the specification). A computer readable medium may be regarded as a computer memory which a computer terminal 123 or laptop 112 is certain to include. Or, one of ordinary skill in the art is certain to conclude that a computer terminal 123 or laptop 112 includes a computer readable medium in order to carry out the functions of such a computing device.

Examiner respectfully disagrees.

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There is nothing in the specification that definitely define a computer readable medium and for reasons similar to the above response, the "medium" is non-statutory and indefinite.

C. Claims 1-6, 11-23, 25-29 and 34-41 are non-obvious in view of Bobde and Holt

Appellant argues Bobde fails to disclose "maintaining, in a first network element...registration information from a plurality of users...maintaining, in a second network element...information associated with said plurality of users, said second network element information comprising a record of registration information that is separate from the registration maintained in the first network element, wherein the second network element is separate from the first network element...and...said information associated with said at least one user comprising registration status information of a network device operated by said user", as recited, in part, in independent claim 1 and similarly in independent claims 11, 17, 18 and 34-41. Independent claim 1 recites two separate network elements (e.g., a first network element and a second network element, or, a presence server and a registrar server). Independent claim 1 also recites that there are two "separate" pieces of registration information. Bobde illustrates a single registration application "R" used by the entire server 102. Although, in Bobde, the presence agent 152 is illustrated as being in direct communication with the registration application 154, whatever registration information is used by the presence agent 152 or any other part of the server 102, that information is

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certainly only stored in the registration application 154. In other words, there is no second "separate" registration information provided anywhere.

Examiner respectfully disagrees.

As an initial matter, the claim language is broad since it does not disclose where the network elements are located, only that they are separate. Therefore, they can be in a same IC but at separate memory locations, or same PCB but in different IC modules, etc.

Bobde discloses in paragraphs 0028-0030 that there exist two separate programs to manage and process registration information and presence information in the server 102. In addition, in paragraph 0029, the registration program 154 can be a dedicated computing device for storing and processing registration request and information, e.g. a registrar server. Therefore, there exists a secondary separate server 102 with presence information maintenance and storage as well as a stand-alone registrar server. Also, programs 154 and 152 process requests, however, the registration information and presence information are stored in the memory 158 and would inherently be in "separate" memory location. Therefore, Bobde discloses two separate network entities.

Appellant further argues in Holt, there is no registrar server as described in the present patent application. Holt discloses that a presence availability server that detects a change in status of a user and then sends a notification to a notification server so that the notification server can inform a different user. Holt discloses that a presence availability server is configured to detect a change in presence or availability status of

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the user (see Abstract of Holt). The change is detected without a registrar server contacting the presence server. Holt does not disclose any type of separate registrar server. The presence notification server in Holt provides its own determination scheme to obtain status information. Therefore, Holt does not disclose or suggest "sending a subscribe message for an event from the second network element to the first network element, wherein the event is a change in the registration information of at least one of the plurality of users...receiving at the first network element a register message from at least one user, said message changing the registration information of said at least one user...sending a notification from the first network element to the second network element in response to the register message", as recited in independent claim 1.

Examiner respectfully disagrees.

Holt is not used to disclose a registrar server or a presence server. Holt is used to disclose only the signaling or message from one network element to another. Therefore, as a result, Holt discloses sending a subscribe message for an event from the second network element to the first network element, wherein the event is a change in the registration information of at least one of the plurality of users...receiving at the first network element a register message from at least one user, said message changing the registration information of said at least one user (see [0019;0025]; figs. 1-3). Finally, Holt is not used for the "sending a notification..." limitation as stated on pg. 27.

(11) Related Proceeding(s) Appendix

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No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/FAYYAZ ALAM/

Examiner, Art Unit 2618

Conferees:

/Edward Urban/

Supervisory Patent Examiner, Art Unit 2618

/Matthew D. Anderson/

Supervisory Patent Examiner, Art Unit 2618